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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,526	10/16/2003	Shigeru Kurosawa	FQ5-616 KAT.045	3993
21254 7590 03/15/2012 MCGINN INTELLECTUAL PROPERTY LAW GROUP, PLLC 8321 OLD COURTHOUSE ROAD SUITE 200 VIENNA, VA 22182-3817			EXAMINER ROSARIO, DENNIS	
			ART UNIT 2624	PAPER NUMBER
			MAIL DATE 03/15/2012	DELIVERY MODE PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* SHIGERU KUROSAWA

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Appeal 2009-015374  
Application 10/686,526  
Technology Center 2600

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Before MAHSHID D. SAADAT, KRISTEN L. DROESCH, and  
KALYAN K. DESHPANDE, *Administrative Patent Judges*.

DESHPANDE, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF CASE<sup>1</sup>

The Appellant seeks review under 35 U.S.C. § 134(a) of a final rejection of claims 1-20, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

We AFFIRM.

The Appellant invented a portable communication apparatus equipped with an image-capturing device. Specification 1:3-7.

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below [bracketed matter and some paragraphing added]:

1. A portable communication apparatus comprising:
  - [1] an image-capturing section for capturing an image depending on an operation of a shutter key and for sensing images in real-time;
  - [2] a display that includes a viewfinder display that displays said real-time sensed images and that includes a reference frame that indicates a predetermined optimal size of characters to achieve a predetermined success rate for character recognition for a character positioned within the reference frame; and
  - [3] a character recognition section for recognizing a character from a captured image.

## REFERENCES

The Examiner relies on the following prior art:

Saruwatari	US 5,912,705	Jun. 15, 1999
Kubo	US 6,639,626 B1	Oct. 28, 2003

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<sup>1</sup> Our decision will make reference to the Appellant's Appeal Brief ("App. Br.," filed Sept. 2, 2008) and the Examiner's Answer ("Ans.," mailed Nov. 14, 2008).

### REJECTIONS

Claims 1-5, 10, 12-15, 18, and 20 stand rejected under 35 U.S.C. §102(b) as being anticipated by Saruwatari.

Claims 6-8 and 17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Saruwatari and Kubo.

Claims 9, 11, 16, and 19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Saruwatari and Horii.

### ANALYSIS

We have reviewed the Examiner's rejections in light of the Appellant's contentions that the Examiner has erred.

We disagree with the Appellant's conclusions. We adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to the Appellant's Appeal Brief. We concur with the conclusion reached by the Examiner. We highlight the following arguments for emphasis.

#### *The rejection of claims 1-5, 10, 12-15, 18, and 20 over Saruwatari*

The Appellant contends that Saruwatari fails to describe "a reference frame that indicates a predetermined optimal size of characters to achieve a predetermined success rate for character recognition for a character positioned within the reference frame," as required by limitation [2] of claim 1. App. Br. 10-13. The Appellant specifically argues that Saruwatari

describes an adjustable size area for the reference frame, and asserts that the claimed invention requires a “predetermined reference frame” and therefore Saruwatari teaches against the claimed invention. App. Br.10- 11.

We disagree with the Appellant. Limitation [2] requires a reference frame that indicates a predetermined optimal size image. Although limitation [2] requires a *predetermined* optimal size, it does not require a *predetermined* reference frame. As such, the Appellant’s argument that Saruwatari fails to describe a “predetermined reference frame” is not persuasive.

Furthermore, Saruwatari describes a photographing apparatus. Saruwatari 1:12-13. The photographing apparatus sets a small designated area in the viewfinder of the camera capable of character recognizing the image in the area. Saruwatari 2:22-25. Two diagonal points are designated whereby the rectangular character area is designated. Saruwatari 5:54-56, Fig. 8A, and Fig. 8B. Additionally, the designated character area may be magnified to an optimal size, such as the size of the viewfinder, for more accurate character recognition. Saruwatari 8:14-21. That is, Saruwatari describes a reference frame designated by a rectangular character area and this character area can be further magnified for optimal character recognition. As such, Saruwatari describes this limitation and anticipates claim 1.

*The rejection of claims 6-8 and 17 over Saruwatari and Kubo*

The Appellant contends that the combination of Saruwatari and Kubo fails to teach or suggest “a timer that delays an image-capturing operation of the image-capturing section by a predetermined time period after an

operation of the shutter key has been completed,” as required by claims 6, 8, and 17. App. Br. 14-15. The Appellant specifically argues that the timing operation described by Kubo would not apply to the environment of Saruwatari because Saruwatari does not have two CCD sensors and therefore there is not a reasonable rationale to combine the references. App. Br. 15.

We disagree with the Appellant. Claims 6, 8, and 17 only require a timer that delays the image capturing process after the operation of the shutter key has been completed. Kubo describes a time delay for a predetermined period of time after a user has pressed the shutter. Kubo 9:60-67 and Fig. 7. As such, Kubo explicitly describes this feature. The Appellant’s argument that Kubo cannot be reasonably combined with Saruwatari because Kubo performs a delay operation through the use of two CCD sensors is also unpersuasive. Kubo describes the functionality of delaying the image capturing process upon selection of the shutter, as discussed *supra*. Although the structures of Saruwatari and Kubo are slightly different, a person with ordinary skill in the art would have been motivated to combine a timer feature with Saruwatari image capturing apparatus with predictable results. The concept of a “timer” is well known to a person with ordinary skill in the photographic arts. Therefore, the combination of Saruwatari and Kubo would have yielded nothing more than predictable results.

*The rejection of claims 9, 11, 16, and 19 over Saruwatari and Horii*

The Appellant contends that Horii is non-analogous to the primary reference Saruwatari. App. Br. 16. We disagree with the Appellant. Our reviewing court articulated that

[t]wo separate tests define the scope of analogous prior art: (1) whether the art is from the same field of endeavor, regardless of the problem addressed and, (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved.

*In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004). Here the Examiner found Saruwatari and Horii are in the same field of endeavor, where the field of endeavor is the photographic arts or image capturing arts. Ans. 15.

Although the Appellant argues that Saruwatari involves a camera and Horii involves a mobile phone, the Horii reference describes a mobile phone that includes a camera device. Horii ¶¶ 0025-0026. Since the cited art is in the same field of endeavor, we do not find the Appellant's argument persuasive.

The Appellant further contends that there is no motivation to combine Saruwatari and Horii and the Examiner relied upon improper hindsight in constructing the rejection of these claims. App. Br. 16 and Reply Br. 10. We disagree with the Appellant. The Examiner found that a person with ordinary skill in the art would have been motivated to combine Saruwatari and Horii in order to simplify communication. Ans. 15. The Appellant argues that the Examiner's "rationale is merely a circular argument wherein the reason for modification is simply because one would thereby have achieved the benefit of having made the modification." App. Br. 16. However, the Appellant has not provided any further rationale or guidance as to how the Examiner's finding are merely a circular argument. Since the

Appellant has failed to provide any persuasive rationale or evidence to rebut the Examiner's findings and conclusion and the Appellant has further failed to provide any persuasive rationale or evidence to illustrate how the combination of Saruwatari and Horii would yield anything more than predictable results, we do not find the Appellant's argument persuasive.

#### CONCLUSIONS OF LAW

The Examiner did not err in rejecting claims 1-5, 10, 12-15, 18, and 20 under 35 U.S.C. §102(b) as being anticipated by Saruwatari.

The Examiner did not err in rejecting claims 6-8 and 17 under 35 U.S.C. §103(a) as being unpatentable over Saruwatari and Kubo.

The Examiner did not err in rejecting claims 9, 11, 16, and 19 under 35 U.S.C. §103(a) as being unpatentable over Saruwatari and Horii.

#### DECISION

The Examiner's decision rejecting claims 1-20 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2010).

AFFIRMED

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